

SERVED: March 31, 1993

NTSB Order No. EA-3846

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 17th day of March, 1993

_____	)	
JOSEPH M. DEL BALZO,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-10724
v.	)	
	)	
JOHN A. BERGLIN,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

The Administrator has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, rendered at the conclusion of an evidentiary hearing on June 19, 1990.<sup>1</sup> In his complaint, the Administrator alleged that respondent violated several sections of the Federal Aviation Regulations

---

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached. Respondent appeared at the hearing pro se.

("FAR," 14 C.F.R. Part 43) on three separate occasions.<sup>2</sup> The law judge affirmed the Administrator's order, in part, finding violations of sections 43.9, 43.13(a), (b), and 43.15(a) of the FARs. Because he found the evidence did not prove by a preponderance that respondent violated section 43.12(a)(1),<sup>3</sup> the law judge reduced the sanction from revocation to an eight-month suspension. It is this aspect of the decision that the Administrator appeals.<sup>4</sup>

The facts giving rise to the Administrator's charges are set forth in detail in the initial decision and will not be repeated at length here. In brief, the Administrator's allegations involved three separate aircraft. As to the first aircraft, he charged that respondent inadequately performed maintenance and repairs and failed to properly perform an annual inspection. The Administrator also alleged that respondent improperly performed

---

<sup>2</sup>In the Order of Revocation, the Administrator set forth three independent instances where respondent violated the FARs. The allegations were divided as follows: In part I of the complaint, the Administrator alleged that respondent violated sections 43.9, 43.13(a), and 43.15(a); in part II, he alleged violations of sections 43.9(a), 43.13(a) and (b); and in part III, he alleged a violation of section 43.12(a)(1). The Order of Revocation, as amended at the hearing, is reproduced in the attached Appendix.

<sup>3</sup>"§ 43.12 Maintenance records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made:  
 (1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part."

<sup>4</sup>The Administrator filed a brief on appeal, to which respondent did not reply. Initially, respondent also appealed the law judge's decision, but later withdrew his appeal.

major repairs to a second aircraft. Finally, the Administrator charged respondent with falsely certifying that he had inspected a third aircraft, N714MW, when he had not completed the annual inspection. In his decision, the law judge concluded that respondent had inspected the third aircraft, albeit "very, very poorly," and therefore had not made a fraudulent or intentionally false entry into the log book, as prohibited by section 43.12(a)(1).

The sole issue in this case is whether respondent's certification that he had performed an annual inspection constituted an intentionally false entry in the maintenance log book of N714MW in violation of FAR section 43.12(a)(1). We have considered the brief submitted by the Administrator, as well as the record below, and conclude that safety in air commerce or air transportation and the public interest require affirmation of Part III of the Administrator's order.

After reviewing the record, we must disagree with the law judge in his conclusion that respondent could fairly be found to have completed an annual inspection of N714MW, as respondent certified in the aircraft's maintenance records. Approximately two weeks after respondent made his entry in the log book, another airframe and powerplant mechanic with inspection authorization inspected the aircraft. At the hearing, he testified that the numerous deficiencies he found prompted him to conclude that the aircraft could not have been just inspected.<sup>5</sup>

---

<sup>5</sup>Some of the indications, as testified to by the witness,

Although the law judge made a factual finding that respondent, contrary to his testimony, did not remove the exterior inspection plates from the aircraft, the law judge nevertheless thought that enough other work had been done to show "there was an attempt on [respondent's] part to do an annual inspection." We disagree. Since the law judge determined that respondent had not done work he knew had to be done as part of an annual inspection, it makes no difference that he may have fulfilled some of the requirements. When a mechanic attests that he has performed an annual inspection and the aircraft is airworthy, he also attests that he has inspected the aircraft thoroughly and correctly. In this case, respondent did not simply overlook one item on the inspection list; he failed to inspect everything he knew he should have inspected. Respondent did not dispute the necessity for, among other things, removal of the inspection plates as an integral part of a complete inspection. Thus, it is clear that by certifying the performance of a complete annual inspection, respondent made an intentionally false statement in the aircraft's maintenance log, in violation of FAR section 43.12(a)(1).<sup>6</sup> Not only is it serious that

(..continued)

that led the witness to this conclusion were: All the screws in the exterior inspection panels were corroded and rusted tight, illustrating that they had not been removed recently; the air filter was very dirty and needed to be replaced; the oil screen contained numerous carbon flakes; the plugs were filthy and had not been cleaned; aileron cable tension and elevator cable tension were found to be below limits; the engine compartment had not been thoroughly cleaned.

<sup>6</sup>In Administrator v. Zumwalt, NTSB Order No. EA-3304 (1991) at 4, n. 4, we explained: "The elements of an intentionally

respondent performed a faulty annual inspection, as it shows a "callous insensitivity to the safety risks associated with returning an unairworthy [aircraft] to service," Administrator v. Zumwalt, NTSB Order No. EA-3304 (1991) at 4, n. 5, but it is even more grievous that he "misrepresented what he had done to the [aircraft] in a record others must rely on, in the interests of safety, to make various future maintenance judgments...." Id.

Based on the foregoing, we find that the Administrator's Order of Revocation should be upheld. This sanction is consistent with Board precedent. See e.g., Administrator v. Rice, 5 NTSB 2285 (1987).<sup>7</sup>

(..continued)

false statement are (1) a false statement (2) made in reference to a material fact and (3) with knowledge of its falsity.... An intentionally false statement made with intent to deceive and followed by action in reliance on the deception would support a finding of fraud." See also Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976); Administrator v. Tankersley, NTSB Order No. EA-3276 (1991) at 4, n. 5. We are not concluding that respondent made a fraudulent statement. The fact that he intentionally entered a false statement in the log book alone is enough to find he violated section 43.12(a)(1).

<sup>7</sup>In Rice, the aircraft inspected belonged to the respondent, who was in the process of selling the aircraft. This fact further bolstered our assessment that he evinced a "willingness to place personal gain ahead of professional responsibility that is incompatible with the position of public trust he occupies. Such an individual clearly lacks the judgment a qualified certificate holder is expected and required to possess." Id. at 2290-91. The same may be said of respondent in the instant case.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted;
2. The order revoking respondent's airman mechanic certificate and inspection authorization is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

APPENDIX



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Alaskan Region  
PH: (907) 271-5269

222 W. 7th Avenue #14  
Anchorage, Alaska  
**99513-7587**

Cases Nos. 89 ALO10057  
89ALO10092  
89ALO10093

November 16, 1989

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John A. Berglin  
2745 Newby Road  
North Pole, Alaska 99705

ORDER OF REVOCATION

You were advised by mail through a Notice of Proposed Certificate Action dated September 25, 1989, of the circumstances and reasons why we proposed to revoke your Airman Mechanic Certificate No. 2109316.

After considering all the evidence presently a part of this proceeding, the Administrator of the Federal Aviation Administration, acting by and through his Assistant Chief Counsel, has determined that:

You are now, and at all times hereinafter mentioned were, the holder of Airman Mechanic Certificate No. 2109316, with airframe and powerplant ratings. You also hold an Inspection Authorization.

I.

1. On or about February 9, 1989, you performed a major alteration of civil aircraft N7245K by installing a rear seat heater and approved that alteration.
2. In performing that major alteration, you did not use data acceptable to the Administrator. Drawing No. 3175A which you referenced to is not approved by the Administrator.
3. On or about February 9, 1989, you performed another major alteration of civil aircraft N7245K by installing Cleveland wheels and brakes but did not execute an FAA Form 337 in connection with this major alteration.

Mr. John A. Berglin

November 16, 1989

4. On or about February 9, 1989, you performed an annual inspection of civil aircraft N7245K and determined that the aircraft met all applicable airworthiness requirements except for the following:
  - (a) The aircraft needed to be reweighed.
  - (b) The aircraft needed a flight test for proper rigging.
  - (c) The aircraft did not have an airworthiness certificate.
5. In addition to the discrepancies which you noted, the aircraft had undergone six major alterations for which there was no maintenance record entry and no FAA Form 337 executed. These alterations were as follows:
  - (a) Pilot folding seat installation.
  - (b) Pilot shoulder harness installation.
  - (c) Bracket air filter installation.
  - (d) Fuselage metal-belly skin installation.
  - (e) Loran C installation.
  - (f) Nav/comm and antenna installation.
6. In performing your annual inspection of civil aircraft N7245K, you failed to determine that the aircraft did not meet the applicable airworthiness requirements due to the lack of maintenance record entries and absence of any FAA Form 337 for the six major alterations listed in paragraph 6 above. Additionally, you did not list these as discrepancies on the discrepancy list.

By reason for the foregoing, you violated the following Federal Aviation Regulations:

- (a) Section 43.9, in that after performing a major alteration, you did not prepare an FAA Form 337 and dispose of that form in the manner prescribed in Part 43, Appendix B.
- (b) Section 43.13(a), in that you performed maintenance or alterations on an aircraft, engine, propeller, or appliance and failed to use methods, techniques, and practices acceptable to the Administrator.



Mr. John A. Berglin

November 16, 1989

- (c) Section 43.15(a), in that you performed an annual inspection and failed to perform it in such a manner as to properly determine whether the aircraft concerned met all applicable airworthiness requirements.

II.

1. On or about April 9, 1989, you performed the following major repairs to civil aircraft N739QH:
  - (a) Replaced rudder skins.
  - (b) Replaced right outboard leading edge skin.
2. In performing those major repairs, you did not use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or acceptable to the Administrator.
3. In performing the major repair to the right leading edge skin, you:
  - (a) Used automotive bondo to fill a void where the leading edge skin did not contour correctly.
  - (b) Installed a patch to the wing-end rib which was missing rivets and had the forward section missing from the patch.
  - (c) Used blind rivets for attaching the skin to the spar.
  - (d) Improperly installed several rivets.
  - (e) Installed a brace between the upper and lower spars on the right wing-tip but did not attach or fasten that brace.
  - (f) Did not route the power wires for the nav flight and wing-tip strobe through the rubber grommet provided in the wing ribs.
  - (g) Used rivets of improper grip length.
4. In regard to your major repair of the rudder, you:
  - (a) Used automotive body filler to fill a gap in a seam.

Mr. John A . Berglin

November 16, 1989

- (b) Installed the skins so that they were warped and wrinkled.
  - (c) Failed to remove loose metal shavings from inside the redder.
  - (d) "Failed to install internal structural rivets.
  - (e) Did not rebalance the rudder.
5. Although you made these major repairs, you did not make any entry in the aircraft maintenance records.
6. Following your major repairs, civil aircraft N739QH was not in a condition at least equal to its original or properly altered condition.

By reason of the foregoing, you violated the following Federal Aviation Regulations:

- 7 (a) Section 43.13(a), in that you performed maintenance or alterations on an aircraft, engine, propeller, Or appliance and failed to use methods, techniques, and practices acceptable to the Administrator.
- 7 x (b) Section 43.13(b), in that you. performed maintenance or alterations and failed to do the work in such a manner and to use materials of such a quality that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on was at least equal to its original or properly altered condition.
- 0 (c) Section 43.9(a), in that you failed, after maintaining, rebuilding, or altering an aircraft, airframe, aircraft engine, propeller, appliance, or component part, to make an entry in the maintenance record for that equipment containing the information required by that section.

*6 amended at time*  
*WFM* III.

1. On April 4, 1989, you certified in the maintenance records of civil aircraft N714MW that you had performed an annual inspection, determined that aircraft to be in airworthy condition, and approved the aircraft for return to service.
2. Although you certified that you had performed an annual inspection, you did not perform the annual inspection which you certified.

Mr. John A. Berglin

November 16, 1989

Based on the foregoing facts and circumstances, you violated Section 43.12(a)(1) of the Federal Aviation Regulations in that you made, or caused to be made, a fraudulent or intentionally false entry in a record or report that is required to be made, kept, or used to show compliance with a requirement under Part 43 of the Federal Aviation Regulations.

By reason of the foregoing, the Administrator has determined that safety in air commerce or air transportation and the public interest require the revocation of your Airman Mechanic Certificate and Inspection Authorization as herein ordered.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Section 609 of the Federal Aviation Act of 1958, as amended, that:

- (1) Any airman mechanic certificate now held by you, including Airman Mechanic Certificate No. 2109316, be and hereby is revoked.
- (2) Any Inspection Authorization now held by you be, and hereby is, revoked.
- (3) Said revocations shall become effective on December 13, 1989, or on the date of actual surrender, if earlier.
- (4) Said certificate and authorization be surrendered by mail in the enclosed self-addressed, postage-paid envelope, or delivered to the Assistant Chief Counsel of the Federal Aviation Administration, 222 W. 7th Avenue, Box 14, Anchorage, Alaska 99513-7587, on or before the effective date of this Order.
- (5) If you fail to surrender your certificate and authorization as above ordered, the effectiveness of this Order shall be extended for a period of one (1) year from the actual date of surrender of the certificate to the Federal Aviation Administration.

JOHN C. CURRY  
Assistant Chief Counsel

---

Donald E. Borey  
Deputy Assistant Chief Counsel